

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: :  
: Chapter 11  
:   
FOAMEX INTERNATIONAL INC., : Case No. 05-12685-KG  
:   
:   
Reorganized Debtor. :  
\_\_\_\_\_  
THE BANK OF NEW YORK, AS :  
INDENTURE TRUSTEE, :  
:   
Appellant, :  
:   
v. : Civil Action No. 07-212-JJF  
:   
FOAMEX INTERNATINOAL INC., :  
:   
Appellee. :

**ERRATA ORDER**

WHEREAS, the Court issued a Memorandum Opinion (D.I. 13) on February 28, 2008, in the above-captioned action, which contained a clerical error;

NOW THEREFORE, IT IS HEREBY ORDERED that a revised page 1 of the Memorandum Opinion, as attached hereto, will be substituted for the page containing the error.

March 28, 2008  
DATE

Joseph J. Fama, Jr.  
UNITED STATES DISTRICT JUDGE

  
Farnan, District Judge.

Pending before the Court is an appeal from the March 23, 2007 Order Denying The Request Of The Bank Of New York, As Indenture Trustee, To Compel The Reorganized Debtors To Pay Post-Maturity Compound Interest On The 2005 Notes (the "Order") issued by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). For the reasons discussed, the Court will reverse the Bankruptcy Court's Order.

#### **I. THE PARTIES' CONTENTIONS**

By its appeal, Appellant, The Bank of New York ("BNY") contends that the Bankruptcy Court erred in concluding that the Indenture dated December 23, 1997 (the "2005 Notes Indenture") did not require the Reorganized Debtors to pay BNY post-maturity interest on overdue installments of interest ("compound interest") as a result of the Reorganized Debtor's payment default. BNY contends that under New York law, if a note provides for interest to accrue on an unpaid balance, then interest continues to accrue in the manner set forth in the note after the stated maturity date and until the outstanding principal balance is paid. BNY contends that the Reorganized Debtors failure to pay principal on the August 15, 2005 maturity date triggered the default rate of 14.5% interest on outstanding principal and missed interest payments. Because the 2005 Notes were left unimpaired under the Debtors' confirmed Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy